

ASSEMBLY BILL

No. 2744

**Introduced by Committee on Labor and Employment (Assembly
Members Roger Hernández (Chair), Alejo, Chau, and Holden)**

February 27, 2014

An act to amend Section 1777.1 of, and to repeal and add Section 1777.7 of, the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 2744, as introduced, Committee on Labor and Employment. Public works: apprenticeship program.

Existing law provides that when a contractor or subcontractor performing a public works project is found by the Labor Commissioner to be in violation of the requirements relating to public works contracts, except with regard to the employment of apprentices, with intent to defraud, or within a 3-year period of having committed 2 or more separate willful violations of these provisions, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible to bid on, be awarded, or perform work as a subcontractor on a public works contract for specified periods of time.

This bill would make these provisions applicable to violations of provisions related to the employment of apprentices.

Existing law, among other things, imposes a civil penalty on contractors or subcontractors who are determined to have knowingly violated specified provisions regulating the employment of apprentices on public works projects, provides that a contractor or subcontractor who is determined to have knowingly committed a serious violation of the apprentice employment provisions may additionally be denied the

right to bid on or be awarded or perform work as a subcontractor on any public works contract for a specified period of time, provides for a review of the civil penalty or debarment by the Labor Commissioner, and provides for a process to collect the civil penalty.

This bill would revise and recast these provisions by, among other things, making the civil penalty applicable to the contractor and any subcontractor responsible for the violation, requiring the Labor Commissioner or his or her designee to issue a civil wage and penalty assessment in accordance with a specified provision, and providing for notice by the Division of Labor Standards Enforcement to the contractor within 15 days of receipt of a complaint that their subcontractor knowingly violated the apprentice employment provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1777.1 of the Labor Code is amended to
2 read:

3 1777.1. (a) Whenever a contractor or subcontractor performing
4 a public works project pursuant to this chapter is found by the
5 Labor Commissioner to be in violation of this chapter with intent
6 to defraud, ~~except Section 1777.5~~, the contractor or subcontractor
7 or a firm, corporation, partnership, or association in which the
8 contractor or subcontractor has any interest is ineligible for a period
9 of not less than one year or more than three years to do either of
10 the following:

11 (1) Bid on or be awarded a contract for a public works project.

12 (2) Perform work as a subcontractor on a public works project.

13 (b) Whenever a contractor or subcontractor performing a public
14 works project pursuant to this chapter is found by the Labor
15 Commissioner to have committed two or more separate willful
16 violations of this chapter, ~~except Section 1777.5~~, within a
17 three-year period, the contractor or subcontractor or a firm,
18 corporation, partnership, or association in which the contractor or
19 subcontractor has any interest is ineligible for a period up to three
20 years to do either of the following:

21 (1) Bid on or be awarded a contract for a public works project.

22 (2) Perform work as a subcontractor on a public works project.

(c) Whenever a contractor or subcontractor performing a public works project has failed to provide a timely response to a request by the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records pursuant to Section 1776, the Labor Commissioner shall notify the contractor or subcontractor that, in addition to any other penalties provided by law, the contractor or subcontractor will be subject to debarment under this section if the certified payroll records are not produced within 30 days after receipt of the written notice. If the commissioner finds that the contractor or subcontractor has failed to comply with Section 1776 by that deadline, unless the commissioner finds that the failure to comply was due to circumstances outside the contractor's or subcontractor's control, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year and not more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.
(2) Perform work as a subcontractor on a public works project.

(d) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

(e) The Labor Commissioner shall publish on the commissioner's Internet Web site a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each

1 debarment of a contractor in each publication chosen by the
2 commissioner. The debarred contractor or subcontractor shall be
3 liable to the commissioner for the reasonable cost of the
4 advertisements, not to exceed five thousand dollars (\$5,000). The
5 amount paid to the commissioner for the advertisements shall be
6 credited against the contractor's or subcontractor's obligation to
7 pay civil fines or penalties for the same willful violation of this
8 chapter.

9 (f) For purposes of this section, "contractor or subcontractor"
10 means a firm, corporation, partnership, or association and its
11 responsible managing officer, as well as any supervisors, managers,
12 and officers found by the Labor Commissioner to be personally
13 and substantially responsible for the willful violation of this
14 chapter.

15 (g) For the purposes of this section, the term "any interest"
16 means an interest in the entity bidding or performing work on the
17 public works project, whether as an owner, partner, officer,
18 manager, employee, agent, consultant, or representative. "Any
19 interest" includes, but is not limited to, all instances where the
20 debarred contractor or subcontractor receives payments, whether
21 cash or any other form of compensation, from any entity bidding
22 or performing work on the public works project, or enters into any
23 contracts or agreements with the entity bidding or performing work
24 on the public works project for services performed or to be
25 performed for contracts that have been or will be assigned or sublet,
26 or for vehicles, tools, equipment, or supplies that have been or will
27 be sold, rented, or leased during the period from the initiation of
28 the debarment proceedings until the end of the term of the
29 debarment period. "Any interest" does not include shares held in
30 a publicly traded corporation if the shares were not received as
31 compensation after the initiation of debarment from an entity
32 bidding or performing work on a public works project.

33 (h) For the purposes of this section, the term "entity" is defined
34 as a company, limited liability company, association, partnership,
35 sole proprietorship, limited liability partnership, corporation,
36 business trust, or organization.

37 (i) The Labor Commissioner shall adopt rules and regulations
38 for the administration and enforcement of this section.

39 SEC. 2. Section 1777.7 of the Labor Code is repealed.

1 ~~1777.7. (a) (1) A contractor or subcontractor that is determined~~
2 ~~by the Labor Commissioner to have knowingly violated Section~~
3 ~~1777.5 shall forfeit as a civil penalty an amount not exceeding one~~
4 ~~hundred dollars (\$100) for each full calendar day of~~
5 ~~noncompliance. The amount of this penalty may be reduced by~~
6 ~~the Labor Commissioner if the amount of the penalty would be~~
7 ~~disproportionate to the severity of the violation. A contractor or~~
8 ~~subcontractor that knowingly commits a second or subsequent~~
9 ~~violation of Section 1777.5 within a three-year period, where the~~
10 ~~noncompliance results in apprenticeship training not being provided~~
11 ~~as required by this chapter, shall forfeit as a civil penalty the sum~~
12 ~~of not more than three hundred dollars (\$300) for each full calendar~~
13 ~~day of noncompliance. Notwithstanding Section 1727, upon receipt~~
14 ~~of a determination that a civil penalty has been imposed by the~~
15 ~~Labor Commissioner, the awarding body shall withhold the amount~~
16 ~~of the civil penalty from contract progress payments then due or~~
17 ~~to become due.~~

18 ~~(2) In lieu of the penalty provided for in this subdivision, the~~
19 ~~Labor Commissioner may, for a first-time violation and with the~~
20 ~~concurrence of an apprenticeship program described in subdivision~~
21 ~~(d), order the contractor or subcontractor to provide apprentice~~
22 ~~employment equivalent to the work hours that would have been~~
23 ~~provided for apprentices during the period of noncompliance.~~

24 ~~(b) In the event a contractor or subcontractor is determined by~~
25 ~~the Labor Commissioner to have knowingly committed a serious~~
26 ~~violation of any provision of Section 1777.5, the Labor~~
27 ~~Commissioner may also deny to the contractor or subcontractor,~~
28 ~~and to its responsible officers, the right to bid on or be awarded~~
29 ~~or perform work as a subcontractor on any public works contract~~
30 ~~for a period of up to one year for the first violation and for a period~~
31 ~~of up to three years for a second or subsequent violation. Each~~
32 ~~period of debarment shall run from the date the determination of~~
33 ~~noncompliance by the Labor Commissioner becomes a final order.~~

34 ~~(c) (1) An affected contractor, subcontractor, or responsible~~
35 ~~officer may obtain a review of the determination of the Labor~~
36 ~~Commissioner imposing the debarment or civil penalty by~~
37 ~~transmitting a written request to the office of the Labor~~
38 ~~Commissioner that appears on the determination within 60 days~~
39 ~~after service of the determination of debarment or civil penalty. If~~

1 ~~no hearing is requested within 60 days after service of the~~
2 ~~determination, the determination shall become final.~~

3 ~~(2) The provisions of Section 1742 shall apply to the review of~~
4 ~~any determination issued pursuant to subdivision (a) or (b), subject~~
5 ~~to the following:~~

6 ~~(A) The provisions of Section 1742 and any regulations~~
7 ~~implementing that section shall apply to a responsible officer who~~
8 ~~requests review of a determination under this section to the same~~
9 ~~extent as any affected contractor or subcontractor who requests~~
10 ~~review.~~

11 ~~(B) In the review of a determination under this section, the~~
12 ~~affected contractor, subcontractor, or responsible officer shall have~~
13 ~~the burden of providing evidence of compliance with Section~~
14 ~~1777.5.~~

15 ~~(3) For purposes of this section, a determination issued pursuant~~
16 ~~to subdivision (a) or (b) includes a determination that has been~~
17 ~~approved by the Labor Commissioner and issued by an awarding~~
18 ~~body that has been authorized to assist the director in the~~
19 ~~enforcement of Section 1777.5 pursuant to subdivision (p) of that~~
20 ~~section. The Labor Commissioner shall have the right to intervene~~
21 ~~in any proceeding for review of a determination issued by an~~
22 ~~awarding body. If the involvement of the Labor Commissioner in~~
23 ~~a labor compliance program enforcement action is limited to a~~
24 ~~review of the determination and the matter is resolved without~~
25 ~~litigation by or against the Labor Commissioner or the department,~~
26 ~~the awarding body shall enforce any applicable penalties, as~~
27 ~~specified in this section, and shall deposit any penalties and~~
28 ~~forfeitures collected in the General Fund.~~

29 ~~(4) The Labor Commissioner may certify a copy of the final~~
30 ~~order of the Director of Industrial Relations and file it with the~~
31 ~~clerk of the superior court in any county in which the affected~~
32 ~~contractor or subcontractor has property or has or had a place of~~
33 ~~business. The clerk, immediately upon the filing, shall enter~~
34 ~~judgment for the state against the person assessed in the amount~~
35 ~~shown on the certified order. A judgment entered pursuant to this~~
36 ~~section shall bear the same rate of interest and shall have the same~~
37 ~~effect as other judgments and be given the same preference allowed~~
38 ~~by the law on other judgments rendered for claims for taxes. The~~
39 ~~clerk shall not charge for the service performed by him or her~~
40 ~~pursuant to this section. An awarding body that has withheld funds~~

1 in response to a determination imposing a penalty under this section
2 shall, upon receipt of a certified copy of a final order that is no
3 longer subject to judicial review, promptly transmit the withheld
4 funds, up to the amount of the certified order, to the Labor
5 Commissioner.

6 (d) ~~If a subcontractor is found to have violated Section 1777.5,~~
7 ~~the prime contractor of the project is not liable for any penalties~~
8 ~~under subdivision (a), unless the prime contractor had knowledge~~
9 ~~of the subcontractor's failure to comply with the provisions of~~
10 ~~Section 1777.5 or unless the prime contractor fails to comply with~~
11 ~~any of the following requirements:~~

12 (1) ~~The contract executed between the contractor and the~~
13 ~~subcontractor or the performance of work on the public works~~
14 ~~project shall include a copy of the provisions of Sections 1771,~~
15 ~~1775, 1776, 1777.5, 1813, and 1815.~~

16 (2) ~~The contractor shall continually monitor a subcontractor's~~
17 ~~use of apprentices required to be employed on the public works~~
18 ~~project pursuant to subdivision (d) of Section 1777.5, including,~~
19 ~~but not limited to, periodic review of the certified payroll of the~~
20 ~~subcontractor.~~

21 (3) ~~Upon becoming aware of a failure of the subcontractor to~~
22 ~~employ the required number of apprentices, the contractor shall~~
23 ~~take corrective action, including, but not limited to, retaining funds~~
24 ~~due the subcontractor for work performed on the public works~~
25 ~~project until the failure is corrected.~~

26 (4) ~~Prior to making the final payment to the subcontractor for~~
27 ~~work performed on the public works project, the contractor shall~~
28 ~~obtain a declaration signed under penalty of perjury from the~~
29 ~~subcontractor that the subcontractor has employed the required~~
30 ~~number of apprentices on the public works project.~~

31 (e) ~~Any funds withheld by the awarding body pursuant to this~~
32 ~~section shall be deposited in the General Fund if the awarding~~
33 ~~body is a state entity, or in the equivalent fund of an awarding~~
34 ~~body if the awarding body is an entity other than the state.~~

35 (f) (1) ~~The Labor Commissioner shall consider, in setting the~~
36 ~~amount of a monetary penalty, in determining whether a violation~~
37 ~~is serious, and in determining whether and for how long a party~~
38 ~~should be debarred for violating this section, all of the following~~
39 ~~circumstances:~~

40 (A) ~~Whether the violation was intentional.~~

~~(B) Whether the party has committed other violations of Section 1777.5.~~

~~(C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.~~

~~(D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.~~

~~(E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.~~

~~(2) If a party seeks review of a decision by the Labor Commissioner to impose a monetary penalty or period of debarment, the Director of Industrial Relations shall decide de novo the appropriate penalty, by considering the same factors set forth above.~~

~~(g) The interpretation of Section 1777.5 and the substantive requirements of this section, including the limitations period for issuing a determination under subdivision (a) or (b), shall be in accordance with the regulations of the California Apprenticeship Council. The Director of Industrial Relations may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under Section 11425.60 of the Government Code.~~

SEC. 3. Section 1777.7 is added to the Labor Code, to read:

1777.7. (a) (1) If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor knowingly violated Section 1777.5, the contractor and any subcontractor responsible for the violation shall forfeit, as a civil penalty to the state or political subdivision on whose behalf the contract is made or awarded, not more than one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation within a three-year period, if the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance.

(2) In lieu of the penalty provided for in this subdivision, the Labor Commissioner may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision

1 (d) of Section 1777.5, order the contractor or subcontractor to
2 provide apprentice employment equivalent to the work hours that
3 would have been provided for apprentices during the period of
4 noncompliance.

5 (b) The Labor Commissioner shall consider, in setting the
6 amount of a monetary penalty, all of the following circumstances:

7 (1) Whether the violation was intentional.

8 (2) Whether the party has committed other violations of Section
9 1777.5.

10 (3) Whether, upon notice of the violation, the party took steps
11 to voluntarily remedy the violation.

12 (4) Whether, and to what extent, the violation resulted in lost
13 training opportunities for apprentices.

14 (5) Whether, and to what extent, the violation otherwise harmed
15 apprentices or apprenticeship programs.

16 (c) (1) The Labor Commissioner or his or her designee shall
17 issue a civil wage and penalty assessment, in accordance with the
18 provisions of Section 1741, upon determination of penalties
19 assessed under subdivisions (a) and (b). Review of a civil wage
20 and penalty assessment issued under this subdivision may be
21 requested in accordance with the provisions of Section 1742. The
22 regulations of the Director of Industrial Relations, which govern
23 proceedings for review of civil wage and penalty assessments and
24 the withholding of contract payments under Article 1 (commencing
25 with Section 1720) and Article 2 (commencing with Section 1770),
26 shall apply.

27 (2) For purposes of this section, a determination issued pursuant
28 to subdivision (a) or (b) includes a determination that has been
29 approved by the Labor Commissioner and issued by an awarding
30 body that has been authorized to assist the director in the
31 enforcement of Section 1777.5 pursuant to subdivision (p) of that
32 section. The Labor Commissioner may intervene in any proceeding
33 for review of a determination issued by an awarding body. If the
34 involvement of the Labor Commissioner in a labor compliance
35 program enforcement action is limited to a review of the
36 determination and the matter is resolved without litigation by or
37 against the Labor Commissioner or the department, the awarding
38 body shall enforce any applicable penalties, as specified in this
39 section, and shall deposit any penalties and forfeitures collected
40 in the General Fund.

1 (d) The determination of the Labor Commissioner as to the
2 amount of the penalty imposed under subdivisions (a) and (b) shall
3 be reviewable only for an abuse of discretion.

4 (e) If a subcontractor is found to have violated Section 1777.5,
5 the prime contractor of the project is not liable for any penalties
6 under subdivision (a) unless the prime contractor had knowledge
7 of the subcontractor's failure to comply with the provisions of
8 Section 1777.5 or unless the prime contractor fails to comply with
9 any of the following requirements:

10 (1) The contract executed between the contractor and the
11 subcontractor for the performance of work on the public works
12 project shall include a copy of the provisions of Sections 1771,
13 1775, 1776, 1777.5, 1813, and 1815.

14 (2) The contractor shall continually monitor a subcontractor's
15 use of apprentices required to be employed on the public works
16 project pursuant to subdivision (d) of Section 1777.5, including,
17 but not limited to, periodic review of the certified payroll of the
18 subcontractor.

19 (3) Upon becoming aware of a failure of the subcontractor to
20 employ the required number of apprentices, the contractor shall
21 take corrective action, including, but not limited to, retaining funds
22 due to the subcontractor for work performed on the public works
23 project until the failure is corrected.

24 (4) Prior to making the final payment to the subcontractor for
25 work performed on the public works project, the contractor shall
26 obtain a declaration signed under penalty of perjury from the
27 subcontractor that the subcontractor has employed the required
28 number of apprentices on the public works project.

29 (f) The Division of Labor Standards Enforcement shall notify
30 the contractor on a public works project within 15 days of the
31 receipt by the division of a complaint that a subcontractor on that
32 public works project knowingly violated Section 1777.5.

33 (g) (1) The interpretation of Section 1777.5 and the substantive
34 requirements of this section applicable to contractors or
35 subcontractors shall be in accordance with the regulations of the
36 California Apprenticeship Council.

37 (2) A contractor knowingly violates Section 1777.5 if the
38 contractor knew or should have known of the requirements of that
39 section and fails to comply, unless the failure to comply was due
40 to circumstances beyond the contractor's control.

- 1 (3) There is an irrebuttable presumption that a contractor knew
- 2 or should have known of the requirements of Section 1777.5 if the
- 3 contractor had previously been found to have violated that section,
- 4 the contract or bid documents, or both, notified the contractor of
- 5 the obligation to comply with this code's provisions applicable to
- 6 public works projects, or the contractor had previously employed
- 7 apprentices on a public works project.
- 8 (h) The Director of Industrial Relations may adopt regulations
- 9 to establish guidelines for the imposition of monetary penalties.